

Subsection (c) directs the Attorney General to allocate appropriated funds to carry out the purposes of the act in accordance with law enforcement's priorities.

Subsection (d) provides that if a telecommunications carrier requests payment for modifications to existing equipment, features, or services to achieve compliance with the assistance capability requirements under section 2602, and the Attorney General does not pay as required under subsection (a), the equipment, feature or service in question will be considered to be in compliance until the equipment, feature, or service is replaced or significantly upgraded or otherwise undergoes major modifications.

Subsection (e) authorizes the Attorney General to establish necessary regulations and procedures to reimburse carriers.

Subsection (f) provides that any dispute over costs is to be resolved by the FCC or the court from which an enforcement order is sought. In the absence of a dispute brought by one of the parties to the FCC, it is not the Committee's intent for the FCC or any other agency of the Federal Government to regulate the price of telecommunications transmission and switching equipment or support services. The Committee regards such regulation as unnecessary in a competitive marketplace. Determinations regarding what constitutes a "reasonable charge" for modifications and features should be made in the first instance by manufacturers and their customers in contractual negotiations in accordance with normal and accepted business practices.

SECTION 2.—AUTHORIZATION OF APPROPRIATIONS

This section authorizes \$500,000,000 to be appropriated for 1995 through 1997, and thereafter any additional amounts that may be necessary to carry out the purposes of the bill, which sums shall be available until expended.

SECTION 3.—EFFECTIVE DATE

This section sets the effective date for compliance with the assistance capability requirements in section 2602 and the systems security and integrity requirement in section 2604 as four years after enactment. All other provisions take effect upon date of enactment.

SECTION 4.—REPORTS

The Attorney General is required to report annually to Congress periodically for the six years after enactment on the monies expended under the bill. In addition, the General Accounting Office is required to report in 1996 and 1998 on the estimated costs of compliance with the bill.

SECTION 5.—CORDLESS TELEPHONES

The Electronic Communications Privacy Act (ECPA), which amended the wiretap statute in 1986, exempted from the protection of the Act "the radio portion of a cordless telephone that is transmitted between the cordless telephone handset and the base unit." 18 U.S.C. § 2510 (1) & (12). The bill deletes the exceptions for cordless phones and imposes a penalty of up to \$500 for intentionally intercepting such communications.

SECTIONS 6 AND 7.—RADIO-BASED COMMUNICATIONS

ECPA does not protect communications that are "readily accessible to the general public," which includes radio communications, unless they fit into one of five specified categories. These excepted categories enjoy protection because they usually are not susceptible to interception by the general public.

The bill would add "electronic communication" as a category of radio communication covered by the wiretap statute. This would provide protection for all forms of electronic communications, including data, even when they may be transmitted by radio.

The bill also amends the penalty provision to treat communications using modulation techniques in the same fashion as those where encryption has been employed to secure communications privacy. This paragraph refers to spread spectrum radio communications, which usually involve the transmission of a signal on different frequencies where the receiving station must possess the necessary algorithm in order to reassemble the signal.

SECTION 8.—TECHNICAL CORRECTION

The wiretap law permits interception of *wire* communications by a wire or electronic service provider in the normal course of business to render services or protect rights or property. The bill would make a technical correction and expand the exception to include *electronic* communications.

SECTION 9.—CLONE PHONES

This section amends the counterfeit access device law to criminalize the use of cellular phones that are altered, or "cloned," to allow free riding on the cellular phone system. Specifically, this section prohibits the use of an altered telecommunications instrument, or a scanning receiver, hardware or software, to obtain unauthorized access to telecommunications services for the purpose of defrauding the carrier. A scanning receiver is defined as a device used to intercept illegally wire, oral or electronic communications. The penalty for violating this new section is imprisonment for up to fifteen years and a fine of the greater of \$50,000 or twice the value obtained by the offense.

SECTION 10.—TRANSACTIONAL DATA

Recognizing that transactional records from on-line communication systems reveal more than telephone toll records or mail covers, subsection (a) eliminates the use of a subpoena by law enforcement to obtain from a provider of electronic communication services the addresses on electronic messages. In order for law enforcement to obtain such information, a court order is required.

This section imposes an intermediate standard to protect on-line transactional records. It is a standard higher than a subpoena, but not a probable cause warrant. The intent of raising the standard for access to transactional data is to guard against "fishing expeditions" by law enforcement. Under the intermediate standard, the court must find, based on law enforcement's showing of facts, that there are specific and articulable grounds to believe that the

records are relevant and material to an ongoing criminal investigation.

Law enforcement could still use a subpoena to obtain the name, address, telephone toll billing records, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized.

Subsection (b) requires government agencies installing and using pen register devices to use, when reasonably available, technology that restricts the information captured by such device to the dialing or signaling information necessary to direct or process a call, excluding any further communication conducted through the use of dialed digits that would otherwise be captured.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATES

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4922, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1994.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4922, a bill to amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

Enactment of H.R. 4922 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
For Robert D. Reischauer

Enclosure

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 4922.
2. Bill title: A bill to amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.
3. Bill status: As ordered reported by the House Committee on the Judiciary on September 29, 1994.
4. Bill purpose: H.R. 4922 would direct telecommunications carriers to attain certain technical capabilities to assist law enforcement agencies with wire and electronic interceptions, pen registers, and trap and trace devices. These companies generally would have four years to comply with the bill's requirements. However, telecommunications carriers would not have to meet the requirements with respect to existing equipment and services unless they are reimbursed by the federal government. Additionally, the Attorney General may agree to reimburse carriers for other reasonable costs in complying with this bill. This legislation would authorize appropriations totaling \$500 million for the fiscal years 1995 through 1997, plus such sums as are necessary for fiscal years thereafter. This legislation would make several minor changes to the current laws relating to the telecommunications industry. H.R. 4922 also would establish both civil and criminal penalties for violation of certain provisions of the bill.

5. Estimated cost to the Federal Government:

By fiscal year in millions of dollars

| | 1995 | 1996 | 1997 | 1998 | 1999 |
|-------------------------------------|------|------|------|------|------|
| Revenues: | | | | | |
| Estimated Receipts from Fines | (1) | (1) | (1) | (1) | |
| Direct spending: Crime victims fund | | | | | |
| Estimated Budget authority | 0 | (1) | (1) | | |
| Estimated outlays | 0 | (1) | (1) | | |
| Authorizations: | | | | | |
| Specified authorizations | 500 | | | | |
| Estimated authorizations | | | | 100 | |
| Total authorizations | 500 | | | 100 | |
| Estimated outlays | 25 | 100 | 175 | 100 | |

Less than \$500,000.

The costs of this bill fall within budget function 750.

Basis of estimate: The estimate assumes that the congress will appropriate the full amounts authorized. The costs of the bill in fiscal years 1998 and 1999 are very uncertain because the precise technical solutions to the bill's requirements are unknown at this time. Based on information from the Federal Bureau of Investigation (FBI) and the telecommunications industry, CBO estimates that these costs would be roughly \$100 million annually, costs

this order of magnitude could continue in later years. The outlay estimates are based on information from the FBI regarding implementation of the new capabilities by the telecommunications carriers.

H.R. 4922 would impose civil and/or criminal fines for violations of the bill's provisions. Both criminal and civil fines increase receipts to the federal government. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. CBO does not expect this additional revenue or direct spending to be significant.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Enactment of H.R. 4922 would affect both receipts and direct spending; however, CBO estimates that any changes in spending and receipts would be insignificant. The following table summarizes the estimated pay-as-you-go impact of this bill.

By fiscal year (in millions of dollars)

| | 1995 | 1996 | 1997 | 1998 |
|--------------------|------|------|------|------|
| Change in outlays | 0 | 0 | 0 | 0 |
| Change in Receipts | 0 | 0 | 0 | 0 |

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Mark Grabowicz and John Webb and Melissa Sampson.

11. Estimate approved by: Paul Van deWater, for C.G. Nuckols, Assistant Director for Budget Analysis

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 4922 will have no significant inflationary impact on prices and costs in the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

| | | |
|-------|---|------|
| Chap. | | Sec. |
| 1. | General provisions | 1 |
| 120. | Telecommunications carrier assistance to the Government | 2601 |

CHAPTER 47—FRAUD AND FALSE STATEMENTS

§ 1029. Fraud and related activity in connection with access devices

(a) Whoever—

(1) * * *

(3) knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices; [or]

(4) knowingly, and with intent to defraud, produces, traffics in, has control or custody of, or possesses device-making equipment;

(5) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications services; or

(6) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses—

(A) a scanning receiver; or

(B) hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services,

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

(c) The punishment for an offense under subsection (a) or (b) of this section is—

(1) * * *

(2) a fine of not more than the greater of \$50,000 or twice the value obtained by the offense or imprisonment for not more than fifteen years, or both, in the case of an offense under subsection [(a)(1) or (a)(4)] (a) (1), (4), (5), or (6) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph; and

(e) As used in this section—

(1) the term “access device” means any card, plate, code, or count number, *electronic serial number*, *mobile identification number*, *personal identification number*, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunc-

tion with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds other than a transfer originated solely by paper instrument;

(5) the term "traffic" means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of; [and]

(6) the term "device-making equipment" means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device[.]; and

(7) the term "scanning receiver" means a device or apparatus that can be used to intercept a wire or electronic communication in violation of chapter 119.

CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

§ 2510. Definitions

As used in this chapter—

(1) "wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication[, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit];

(12) "electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affect interstate or foreign commerce, but does not include—

[(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

[(B)] (A) any wire or oral communication;

[(C)] (B) any communication made through a tone-only paging device; or

[(D)] (C) any communication from a tracking device (as defined in section 3117 of this title);

(16) "readily accessible to the general public" means, with respect to a radio communication, that such communication is not—

(A) * * *

* * * * *

(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; [or]

(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio; or

(F) *an electronic communication;*

* * * * *

§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

(1) * * *

(2)(a)(i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are [used in the transmission of a wire communication] *used in the transmission of a wire or electronic communication*, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

* * * * *

(4)(a) * * *

(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled [or encrypted, then], *encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication—*

(i) if the communication is not the radio portion of a cellular telephone communication, *a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit*, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

(ii) if the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than \$500.

* * * * *

CHAPTER 120—TELECOMMUNICATIONS CARRIER ASSISTANCE TO THE GOVERNMENT

Sec.

- 2601. Definitions.
- 2602. Assistance capability requirements.
- 2603. Notices of capacity requirements.
- 2604. Systems security and integrity.
- 2605. Cooperation of equipment manufacturers and providers of telecommunications support services.
- 2606. Technical requirements and standards; extension of compliance date.
- 2607. Enforcement orders.
- 2608. Payment of costs of telecommunications carriers to comply with capability requirements.

§2601. Definitions

(a) **DEFINITIONS.**—In this chapter—
the terms defined in section 2510 have, respectively, the meanings stated in that section.

“call-identifying information”—

(A) means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by the subscriber equipment, facility, or service of a telecommunications carrier that is the subject of a court order or lawful authorization; but

(B) does not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number).

“Commission” means the Federal Communications Commission.

“government” means the government of the United States and any agency or instrumentality thereof, the District of Columbia, any commonwealth, territory, or possession of the United States, and any State or political subdivision thereof authorized by law to conduct electronic surveillance.

“information services”—

(A) means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and

(B) includes electronic publishing and electronic messaging services; but

(C) does not include any capability for a telecommunications carrier's internal management, control, or operation of its telecommunications network.

"telecommunications support services" means a product, software, or service used by a telecommunications carrier for the internal signaling or switching functions of its telecommunications network.

"telecommunications carrier"—

(A) means a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire (within the meaning of section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)));

(B) includes—

(i) a person or entity engaged in providing commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))); or

(ii) a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of this chapter; but

(C) does not include persons or entities insofar as they are engaged in providing information services.

§2602. Assistance capability requirements

(a) **CAPABILITY REQUIREMENTS.**—Except as provided in subsections (b), (c), and (d) of this section and sections 2607(c) and 2608(d), a telecommunications carrier shall ensure that its services or facilities that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of—

(1) expeditiously isolating and enabling the government to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within its service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's service, facility, or equipment or at such later time as may be acceptable to the government;

(2) expeditiously isolating and enabling the government to access call-identifying information that is reasonably available to the carrier—

(A) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

(B) in a manner that allows it to be associated with the communication to which it pertains, except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

(3) delivering intercepted communications and call-identifying information to the government in a format such that the information may be transmitted by means of facilities or services procured

by the government to a location other than the premises of the carrier; and

(4) facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects—

(A) the privacy and security of communications and call-identifying information not authorized to be intercepted; and

(B) information regarding the government's interception of communications and access to call-identifying information.

(b) LIMITATIONS.—

(1) DESIGN OF FEATURES AND SYSTEMS CONFIGURATIONS.— This chapter does not authorize any law enforcement agency or officer—

(A) to require any specific design of features or system configurations to be adopted by providers of wire or electronic communication service, manufacturers of telecommunications equipment, or providers of telecommunications support services; or

(B) to prohibit the adoption of any feature or service by providers of wire or electronic communication service, manufacturers of telecommunications equipment, or providers of telecommunications support services.

(2) INFORMATION SERVICES; PRIVATE NETWORKS AND INTERCONNECTION SERVICES AND FACILITIES.—The requirements of subsection (a) do not apply to—

(A) information services; or

(B) services or facilities that support the transport or switching of communications for private networks or for the sole purpose of interconnecting telecommunications carriers.

(3) ENCRYPTION.—A telecommunications carrier shall not be responsible for decrypting, or ensuring the government's ability to decrypt, any communication encrypted by a subscriber or customer, unless the encryption was provided by the carrier and the carrier possesses the information necessary to decrypt the communication.

(c) EMERGENCY OR EXIGENT CIRCUMSTANCES.—In emergency or exigent circumstances (including those described in sections 2518 (7) or (11)(b) and 3125 of this title and section 1805(e) of title 50), a carrier at its discretion may comply with subsection (a)(3) by allowing monitoring at its premises if that is the only means of accomplishing the interception or access.

(d) MOBILE SERVICE ASSISTANCE REQUIREMENTS.—A telecommunications carrier offering a feature or service that allows subscribers to redirect, hand off, or assign their wire or electronic communications to another service area or another service provider or to utilize facilities in another service area or of another service provider shall ensure that, when the carrier that had been providing assistance for the interception of wire or electronic communications or access to call-identifying information pursuant to a court order or lawful authorization no longer has access to the content of such

communications or call-identifying information within the service area in which interception has been occurring as a result of the subscriber's use of such a feature or service, information is made available to the government (before, during, or immediately after the transfer of such communications) identifying the provider of wire or electronic communication service that has acquired access to the communications.

§2603. Notices of capacity requirements

(a) NOTICES OF MAXIMUM AND ACTUAL CAPACITY REQUIREMENTS.—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this chapter, after consulting with State and local law enforcement agencies, telecommunications carriers, providers of telecommunications support services, and manufacturers of telecommunications equipment, and after notice and comment, the Attorney General shall publish in the Federal Register and provide to appropriate telecommunications industry associations and standard-setting organizations—

(A) notice of the maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after the date that is 4 years after the date of enactment of this chapter; and

(B) notice of the actual number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity set forth under subparagraph (A), that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after the date that is 4 years after the date of enactment of this chapter.

(2) **BASIS OF NOTICES.**—The notices issued under paragraph (1)—

(A) may be based upon the type of equipment, type of service, number of subscribers, type or size of carrier, nature of service area, or any other measure; and

(B) shall identify, to the maximum extent possible, the capacity required at specific geographic locations, including carrier office locations.

(b) COMPLIANCE WITH CAPACITY NOTICES.—

(1) **INITIAL CAPACITY.**—Within 3 years after the publication by the Attorney General of a notice of capacity requirements or within 4 years after the date of enactment of this chapter, whichever is longer, a telecommunications carrier shall, subject to subsection (e), ensure that its systems are capable of—

(A) expanding to the maximum capacity set forth in the notice under subsection (a)(1)(A); and

(B) accommodating simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under subsection (a)(1)(B).

(2) **EXPANSION TO MAXIMUM CAPACITY.**—After the date described in paragraph (1), a telecommunications carrier shall, subject to subsection (e), ensure that it can accommodate expeditiously any increase in the actual number of communication interceptions, pen registers, and trap and trace devices that authorized agencies may seek to conduct and use, up to the maximum capacity requirement set forth in the notice under subsection (a)(1)(A).

(c) **NOTICES OF INCREASED MAXIMUM CAPACITY REQUIREMENTS.**—

(1) The Attorney General shall periodically publish in the Federal Register, after notice and comment, notice of any necessary increases in the maximum capacity requirement set forth in the notice under subsection (a)(1)(A).

(2) Within 3 years after notice of increased maximum capacity requirements is published under paragraph (1), or within such longer time period as the Attorney General may specify, a telecommunications carrier shall, subject to subsection (e), ensure that its systems are capable of expanding to the increased maximum capacity set forth in the notice.

(d) **CARRIER STATEMENT.**—Within 180 days after the publication by the Attorney General of a notice of capacity requirements pursuant to subsection (a), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under subparagraph (A) or (B) of subsection (a)(1).

(e) **REIMBURSEMENT REQUIRED FOR COMPLIANCE.**—The Attorney General shall review the statements submitted under subsection (d) and may, subject to the availability of appropriations, agree to reimburse a telecommunications carrier for the just and reasonable costs directly associated with modifications to attain such capacity requirement. Until the Attorney General agrees to reimburse such carrier for such modification, such carrier shall be considered to be in compliance with the capacity notices under subparagraphs (A) and (B) of subsection (a)(1).

§2604. Systems security and integrity

A telecommunications carrier shall ensure that any court ordered or lawfully authorized interception of communications or access to call-identifying information effected within its switching premises can be activated only with the affirmative intervention of an individual officer or employee of the carrier.

§2605. Cooperation of equipment manufacturers and providers of telecommunications support services

(a) **CONSULTATION.**—A telecommunications carrier shall consult, as necessary, in a timely fashion with manufacturers of its telecommunications transmission and switching equipment and its providers of telecommunications support services for the purpose of ensuring that current and planned services and equipment comply with the capability requirements of section 2602 and the capacity requirements identified by the Attorney General under section 2601.

(b) **COOPERATION.**—Subject to sections 2607(c) and 2608(d), a manufacturer of telecommunications transmission or switching equipment and a provider of telecommunications support services shall, on a reasonably timely basis and at a reasonable charge, make available to the telecommunications carriers using its equipment or services such features or modifications as are necessary to permit such carriers to comply with the capability requirements of section 2602 and the capacity requirements identified by the Attorney General under section 2603.

§2606. Technical requirements and standards; extension of compliance date

(a) **SAFE HARBOR.**—

(1) **CONSULTATION.**—To ensure the efficient and industry-wide implementation of the assistance capability requirements under section 2602, the Attorney General, in coordination with other Federal, State, and local law enforcement agencies, shall consult with appropriate associations and standard-setting organizations of the telecommunications industry and with representatives of users of telecommunications services and facilities.

(2) **COMPLIANCE UNDER ACCEPTED STANDARDS.**—A telecommunications carrier shall be found to be in compliance with the assistance capability requirements under section 2602, and a manufacturer of telecommunications transmission or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 2605, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization or by the Commission under subsection (b) to meet the requirements of section 2602.

(3) **ABSENCE OF STANDARDS.**—The absence of technical requirements or standards for implementing the assistance capability requirements of section 2602 shall not—

(A) preclude a carrier, manufacturer, or services provider from deploying a technology or service; or

(B) relieve a carrier, manufacturer, or service provider of the obligations imposed by section 2602 or 2605, as applicable.

(b) **FCC AUTHORITY.**—

(1) **IN GENERAL.**—If industry associations or standard-setting organizations fail to issue technical requirements or standards or if a government agency or any other person believes that such requirements or standards are deficient, the agency or person may petition the Commission to establish, by notice and comment rulemaking or such other proceedings as the Commission may be authorized to conduct, technical requirements or standards that—

(A) meet the assistance capability requirements of section 2602;

(B) protect the privacy and security of communications not authorized to be intercepted; and

C) serve the policy of the United States to encourage the provision of new technologies and services to the public.

(2) **TRANSITION PERIOD.**—If an industry technical requirement or standard is set aside or supplanted as a result of Commission action under this section, the Commission, after consultation with the Attorney General, shall establish a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 2602 during any transition period.

(c) **EXTENSION OF COMPLIANCE DATE FOR FEATURES AND SERVICES.**—

(1) **PETITION.**—A telecommunications carrier proposing to install or deploy, or having installed or deployed, a feature or service within 4 years after the date of enactment of this chapter may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section 2602.

(2) **GROUND FOR EXTENSION.**—The Commission may, after affording a full opportunity for hearing and after consultation with the Attorney General, grant an extension under this paragraph, if the Commission determines that compliance with the assistance capability requirements under section 2602 is not reasonably achievable through application of technology available within the compliance period.

(3) **LENGTH OF EXTENSION.**—An extension under this paragraph shall extend for no longer than the earlier of—

(A) the date determined by the Commission as necessary for the carrier to comply with the assistance capability requirements under section 2602; or

(B) the date that is 2 years after the date on which the extension is granted.

(4) **APPLICABILITY OF EXTENSION.**—An extension under this subsection shall apply to only that part of the carrier's business on which the new feature or service is used.

§2607. Enforcement orders

(a) **ENFORCEMENT BY COURT ISSUING SURVEILLANCE ORDER.**—If a court authorizing an interception under chapter 119, a State statute, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or authorizing use of a pen register or a trap and trace device under chapter 206 or a State statute finds that a telecommunications carrier has failed to comply with the requirement in this chapter, the court may direct that the carrier comply forthwith and may direct that a provider of support services to the carrier or the manufacturer of the carrier's transmission or switching equipment furnish forthwith modifications necessary for the carrier to comply.

(b) **ENFORCEMENT UPON APPLICATION BY ATTORNEY GENERAL.**—The Attorney General may apply to the appropriate United States district court for, and the United States district courts shall have jurisdiction to issue, an order directing that a telecommunication carrier, a manufacturer of telecommunications transmission or

switching equipment, or a provider of telecommunications support services comply with this chapter.

(c) **GROUND FOR ISSUANCE.**—A court shall issue an order under subsection (a) or (b) only if the court finds that—

(1) alternative technologies or capabilities or the facilities of another carrier are not reasonably available to law enforcement for implementing the interception of communications or access to call-identifying information; and

(2) compliance with the requirements of this chapter is reasonably achievable through the application of available technology to the feature or service at issue or would have been reasonably achievable if timely action had been taken.

(d) **TIME FOR COMPLIANCE.**—Upon issuance of an enforcement order under this section, the court shall specify a reasonable time and conditions for complying with its order, considering the good faith efforts to comply in a timely manner, any effect on the carrier's, manufacturer's, or service provider's ability to continue to do business, the degree of culpability or delay in undertaking efforts to comply, and such other matters as justice may require.

(e) **LIMITATION.**—An order under this section may not require a telecommunications carrier to meet the government's demand for interception of communications and acquisition of call-identifying information to any extent in excess of the capacity for which the Attorney General has agreed to reimburse such carrier.

(f) **CIVIL PENALTY.**—

(1) **IN GENERAL.**—A court issuing an order under this section against a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services may impose a civil penalty of up to \$10,000 per day for each day in violation after the issuance of the order or after such future date as the court may specify.

(2) **CONSIDERATIONS.**—In determining whether to impose a fine and in determining its amount, the court shall take into account—

(A) the nature, circumstances, and extent of the violation;

(B) the violator's ability to pay, the violator's good faith efforts to comply in a timely manner, any effect on the violator's ability to continue to do business, the degree of culpability, and the length of any delay in undertaking efforts to comply; and

(C) such other matters as justice may require.

(3) **CIVIL ACTION.**—The Attorney General may file a civil action in the appropriate United States district court to collect, and the United States district courts shall have jurisdiction to impose, such fines.

§2608. Payment of costs of telecommunications carriers to comply with capability requirements

(a) **EQUIPMENT, FEATURES, AND SERVICES DEPLOYED BEFORE DATE OF ENACTMENT.**—The Attorney General may, subject to the availability of appropriations, agree to pay telecommunications carriers for all just and reasonable costs directly associated with the modifications performed by carriers in connection with equipment.

features, and services installed or deployed before the date of enactment of this chapter to establish the capabilities necessary to comply with section 2602.

(b) EQUIPMENT, FEATURES, AND SERVICES DEPLOYED ON OR AFTER DATE OF ENACTMENT.—

(1) **IN GENERAL.**—If compliance with the assistance capability requirements of section 2602 is not reasonably achievable with respect to equipment, features, or services deployed on or after the date of enactment of this chapter, the Attorney General, on application of a telecommunications carrier, may agree to pay the telecommunications carrier for just and reasonable costs directly associated with achieving compliance.

(2) **CONSIDERATION.**—In determining whether compliance with the assistance capability requirements of section 2602 is reasonably achievable with respect to any equipment, feature, or service installed or deployed after the date of enactment of this chapter, consideration shall be given to the time when the equipment, feature, or service was installed or deployed.

(c) ALLOCATION OF FUNDS FOR PAYMENT.—The Attorney General shall allocate funds appropriated to carry out this chapter in accordance with law enforcement priorities determined by the Attorney General.

(d) FAILURE TO MAKE PAYMENT WITH RESPECT TO EQUIPMENT, FEATURES, AND SERVICES DEPLOYED BEFORE DATE OF ENACTMENT.—

(1) **CONSIDERED TO BE IN COMPLIANCE.**—If a carrier has requested payment in accordance with procedures promulgated pursuant to subsection (e), and the Attorney General has not agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring the equipment, feature, or service into actual compliance with the assistance capability requirements of section 2602, any equipment, feature, or service of a telecommunications carrier deployed before the date of enactment of this chapter shall be considered to be in compliance with the assistance capability requirements of section 2602 until the equipment, feature, or service is replaced or significantly upgraded or otherwise undergoes major modification.

(2) **LIMITATION ON ORDER.**—An order under section 2607 shall not require a telecommunications carrier to modify, for the purpose of complying with the assistance capability requirements of section 2602, any equipment, feature, or service deployed before the date of enactment of this chapter unless the Attorney General has agreed to pay the telecommunications carrier for all just and reasonable costs directly associated with modifications necessary to bring the equipment, feature, or service into actual compliance with those requirements.

(e) PROCEDURES AND REGULATIONS.—Notwithstanding any other law, the Attorney General shall, after notice and comment, establish any procedures and regulations deemed necessary to effectuate timely and cost-efficient payment to telecommunications carriers for compensable costs incurred under this chapter, under chapters 119 and 121, and under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(f) DISPUTE RESOLUTION.—If there is a dispute between the Attorney General and a telecommunications carrier regarding the amount of just and reasonable costs to be paid under subsection (a), the dispute shall be resolved and the amount determined in a proceeding initiated at the Commission or by the court from which an enforcement order is sought under section 2607.

* * * * *

CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

* * * * *

§ 2703. Requirements for governmental access

(a) * * *

* * * * *

(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) * * *

(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

[(i)] uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury or trial subpoena;

[(ii)] (i) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

[(iii)] (ii) obtains a court order for such disclosure under subsection (d) of this section; or

[(iv)] (iii) has the consent of the subscriber or customer to such disclosure.

(C) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the name, address, telephone toll billing records, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under subparagraph (B).

* * * * *

(d) REQUIREMENTS FOR COURT ORDER.—[A court order for disclosure under subsection (b) or (c) of this section may be issued by any court that is a court of competent jurisdiction set forth in section 3126(2)(A) of this title and shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry.] A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction described in section 3126(2)(A) and shall issue only if the governmental entity of

fers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

* * * * *

CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

* * * * *

§ 3121. General prohibition on pen register and trap and trace device use; exception

(a) * * *

* * * * *

(c) LIMITATION.—A government agency authorized to install and use a pen register under this chapter or under State law, shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing and signaling information utilized in call processing.

[(c)] (d) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

* * * * *

ADDITIONAL VIEWS

It is essential that we provide a means of assuring that law enforcement agencies are not impaired by new telephone switching technology as they carry out lawful wiretaps.

We all agree with this goal, but there are considerable differences of opinion with respect to how the cost of developing and installing the required software in existing switches and in assuring that new equipment is designed with wiretap capability should be borne. The bill as reported could under certain circumstances place a significant share of those costs on the telephone industry.

Through the diligent efforts of representatives of the telecommunications industry, the Electronic Frontier Foundation, and the Energy & Commerce Committee staff, we have constructed an approach to resolving the cost issue which we believe to be fair and equitable.

Under that compromise, the near term costs for the next four years would unequivocally be borne by the government. Existing switches would be retrofitted with the software necessary to assure wiretap capability. Under this provision, absent a commitment by law enforcement to pay fully for the modifications, a carrier would be deemed to be in compliance with the law and no further action on its part would be required.

A second important provision will require that as new switching equipment and services are designed and manufactured, wiretapping capabilities be assured. It is obviously much more economical to design the wiretapping access into the new equipment and services rather than to engage after-the-fact and expensive retrofits. That requirement will, therefore, be a part of the law.

The costs of assuring that new switches and services be accessible for wiretapping are unknown at this time. They may be de minimis or they may be substantial. Our compromise provides that the Federal Communications Commission will resolve questions associated with who between the industry and the government shall bear these costs. The Commission would apply all sunshine requirements to all parties to its proceeding, including government entities, and would determine these questions:

1. Whether the costs of meeting the wiretap capability requirements of law enforcement shall be borne by the government or should be assumed by the telecommunications carriers, equipment manufacturers and providers of telecommunications support services, or some combination thereof.

2. What cost allocation methods best ensure accountability and protection to personal privacy.

3. What methods best ensure that there will be no "goldplating" either by the government asking for upgrades that are unnecessary or by industry seeking to have law enforcement pay for updating their networks.

4. How to ensure that whatever method is selected is competitively neutral, has a minimum effect on the deployment of an advanced telecommunications network and minimum adverse effect on telephone rates.

We are pleased to report that this proposed compromise has been accepted in principle by the FBI, the United States Telephone Association, The Electronic Frontier Foundation, and the Digital Telephony Working Group, which represents a broad spectrum of privacy protection and industry interests.

Following the reporting of this bill by the House Judiciary Committee, the Energy & Commerce Committee will review its provisions, and we anticipate that the compromise to which we have agreed in principle will be favorably received by that committee. The compromise would then be embodied in a floor amendment to be offered at the time this legislation is considered by the full House.

DON EDWARDS.
RICK BOUCHER.

○